

HOUSE BILL 760

P2
HB 721/10 – HGO

11r0403

By: **Delegates McDonough, Aumann, Dwyer, Elliott, Impallaria, Kach, Kipke, Krebs, McComas, McMillan, O'Donnell, Ready, and Stocksdale**
Introduced and read first time: February 10, 2011
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Use of Federal E-Verify Program to Prevent**
3 **Employment of Unauthorized Alien Workers**

4 FOR the purpose of declaring that it is the public policy of the State to restrict and
5 deter the use of unauthorized alien workers in the performance of public
6 contracts and grants in this State; specifying criteria for mandatory registration
7 in a certain federal E-Verify program for certain contractors and grantees;
8 prohibiting noncompliant persons or entities from performing certain contracts;
9 imposing certain requirements on certain subcontractors; restricting eligibility
10 for prequalification to contractors in compliance with certain provisions of law;
11 creating a safe harbor against debarment for contractors and grantors
12 registered under the E-Verify program; providing for an administrative appeal
13 to the Board of Contract Appeals; and generally relating to the employment of
14 unauthorized alien workers and the federal E-Verify program.

15 BY adding to

16 Article – State Finance and Procurement
17 Section 20–101 through 20–106 to be under the new title “Title 20. Use of the
18 Federal E-Verify Program to Prevent the Employment of Unauthorized
19 Alien Workers”
20 Annotated Code of Maryland
21 (2009 Replacement Volume and 2010 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article – State Finance and Procurement**

25 **TITLE 20. USE OF THE FEDERAL E-VERIFY PROGRAM TO PREVENT THE**
26 **EMPLOYMENT OF UNAUTHORIZED ALIEN WORKERS.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 **20-101.**

2 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) "AGENCY" MEANS ANY AGENCY, DEPARTMENT, BOARD,
5 COMMISSION, OR OTHER ENTITY OF THE STATE OR A POLITICAL SUBDIVISION
6 OF THE STATE THAT CONTRACTS WITH CONTRACTORS OR ISSUES GRANTS OF
7 PUBLIC MONEY TO ELIGIBLE RECIPIENTS.

8 (C) "E-VERIFY PROGRAM" MEANS:

9 (1) THE FEDERAL E-VERIFY PROGRAM THAT PROVIDES
10 ELECTRONIC VERIFICATION OF WORK AUTHORIZATION THAT IS JOINTLY
11 OPERATED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY
12 AND THE SOCIAL SECURITY ADMINISTRATION; OR

13 (2) A SUCCESSOR PROGRAM THAT IS AUTHORIZED BY THE
14 UNITED STATES DEPARTMENT OF HOMELAND SECURITY TO VERIFY
15 ELECTRONICALLY THE WORK AUTHORIZATION STATUS OF NEWLY HIRED
16 EMPLOYEES IN ACCORDANCE WITH FEDERAL IMMIGRATION LAW OR
17 REGULATION.

18 (D) "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE
19 THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE
20 UNITED STATES AS DESCRIBED IN 8 U.S.C. § 1324A(H)(3).

21 **20-102.**

22 IT SHALL BE THE PUBLIC POLICY OF THE STATE THAT A GOVERNMENT
23 AGENCY OR GOVERNMENT CONTRACTOR MAY NOT PERFORM OR ALLOW THE
24 PERFORMANCE OF A PUBLIC CONTRACT IN THIS STATE NOR PROVIDE FOR A
25 GRANT OF STATE MONEY IF UNAUTHORIZED ALIEN WORKERS ARE TO BE
26 UTILIZED IN ANY MANNER IN THE PERFORMANCE OF THE CONTRACT OR GRANT.

27 **20-103.**

28 (A) THIS SECTION APPLIES TO:

29 (1) A CONTRACTOR THAT ENTERS INTO A CONTRACT WITH AN
30 AGENCY OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE;

1 **(2) ANY SUBCONTRACTOR OF A CONTRACTOR DESCRIBED UNDER**
2 **ITEM (1) OF THIS SUBSECTION; AND**

3 **(3) A PERSON WHO RECEIVES A GRANT OF MONEY FROM THE**
4 **STATE OR A POLITICAL SUBDIVISION OF THE STATE.**

5 **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
6 **SUBSECTION, A PERSON OR ENTITY SUBJECT TO THIS SECTION SHALL REGISTER**
7 **AND PARTICIPATE IN THE E-VERIFY PROGRAM.**

8 **(2) THE FOLLOWING CONTRACTS OR GRANTS ARE EXEMPT FROM**
9 **PARAGRAPH (1) OF THIS SUBSECTION:**

10 **(I) A CONTRACT OR SUBCONTRACT OF LESS THAN \$10,000,**
11 **INCLUDING A SUBCONTRACT WITH AN INDEPENDENT CONTRACTOR, WHOSE**
12 **PERFORMANCE WILL NOT NECESSITATE A PAYMENT OF EMPLOYEE OR**
13 **NONEMPLOYEE COMPENSATION GREATER THAN \$600 DURING ANY YEAR;**

14 **(II) A GRANT OF LESS THAN \$10,000, THE PERFORMANCE**
15 **OF WHICH WILL NOT NECESSITATE PAYMENT OF EMPLOYEE OR NONEMPLOYEE**
16 **COMPENSATION GREATER THAN \$600 DURING ANY YEAR;**

17 **(III) A CONTRACT OR GRANT UNDER WHICH THE WORK IS**
18 **PERFORMED ENTIRELY BY INDIVIDUALS NOT SUBJECT TO THE EMPLOYMENT**
19 **VERIFICATION REQUIREMENTS OF 8 U.S.C. § 1324A(B);**

20 **(IV) A CONTRACT FOR THE SUPPLY OF:**

21 **1. COMMERCIALLY AVAILABLE OFF-THE-SHELF**
22 **ITEMS; OR**

23 **2. ITEMS THAT ARE SOLD IN SUBSTANTIAL**
24 **QUANTITIES IN THE COMMERCIAL MARKETPLACE AND OFFERED TO THE STATE**
25 **IN THE SAME FORM THAT THEY ARE AVAILABLE IN THE COMMERCIAL**
26 **MARKETPLACE; AND**

27 **(V) A CONTRACT FOR FOOD AND AGRICULTURAL PRODUCTS**
28 **SHIPPED AS BULK CARGO, INCLUDING GRAINS, OILS, PRODUCE, AND SIMILAR**
29 **COMMODITIES.**

30 **20-104.**

31 **(A) BEFORE THE APPROVAL OF ANY PAYMENT BY A CONTRACTING**
32 **AGENCY TO A PERSON REQUIRED TO REGISTER FOR AND PARTICIPATE IN THE**

1 **E-VERIFY PROGRAM UNDER THIS TITLE, THAT PERSON SHALL AFFIRM TO THE**
2 **CONTRACTING AGENCY UNDER PENALTY OF PERJURY THAT:**

3 **(1) EMPLOYMENT AUTHORIZATION HAS BEEN MADE FOR ALL**
4 **EMPLOYEES HIRED DURING THE PERFORMANCE PERIOD OF THE CONTRACT OR**
5 **GRANT OR, IF THE PERIOD OF VALIDITY IS LESS THAN 1 YEAR, DURING THE**
6 **FISCAL YEAR IN WHICH THE GREATER PART OF THE CONTRACT OR GRANT WILL**
7 **BE PERFORMED; AND**

8 **(2) THE SOCIAL SECURITY NUMBER OF ANY CURRENT EMPLOYEE**
9 **WHO WILL PERFORM WORK OR PROVIDE SERVICES UNDER THE CONTRACT OR**
10 **GRANT HAS BEEN VERIFIED USING THE SOCIAL SECURITY NUMBER**
11 **VERIFICATION SERVICE OPERATED BY THE SOCIAL SECURITY**
12 **ADMINISTRATION, OR AN AUTHORIZED SUCCESSOR PROGRAM.**

13 **(B) A PERSON SUBJECT TO THIS TITLE MAY NOT EMPLOY OR CONTINUE**
14 **TO EMPLOY AN INDIVIDUAL, OR CONTRACT INDEPENDENTLY WITH AN**
15 **INDIVIDUAL, TO PERFORM WORK OR PROVIDE SERVICES UNDER THAT**
16 **CONTRACT, IF THAT INDIVIDUAL IS NOT LAWFULLY ELIGIBLE FOR EMPLOYMENT**
17 **IN THE UNITED STATES, AS DETERMINED BY VERIFICATION OF THE**
18 **INDIVIDUAL'S STATUS THROUGH THE E-VERIFY PROGRAM.**

19 **(C) AS A CONDITION OF A CONTRACT, A PERSON SUBJECT TO THIS**
20 **TITLE SHALL REQUIRE THAT THE PRIME CONTRACTOR INCLUDE IN EVERY**
21 **SUBCONTRACT EXECUTED UNDER THE CONTRACT A PROVISION REQUIRING THE**
22 **SUBCONTRACTOR, INCLUDING AN INDIVIDUAL INDEPENDENT CONTRACTOR, TO**
23 **COMPLY WITH THE REQUIREMENTS IMPOSED BY THIS TITLE ON THE PRIME**
24 **CONTRACTOR.**

25 **20-105.**

26 **AN AGENCY SUBJECT TO THIS TITLE SHALL DENY PREQUALIFICATION TO**
27 **ANY CONTRACTOR WHO FAILS TO REGISTER AND PARTICIPATE IN THE**
28 **E-VERIFY PROGRAM.**

29 **20-106.**

30 **(A) A CONTRACTOR, SUBCONTRACTOR, OR GRANTEE THAT VIOLATES**
31 **ANY PROVISION OF THIS TITLE:**

32 **(1) SHALL BE DEBARRED FROM CONTRACTING WITH ANY AGENCY**
33 **OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE FOR A PERIOD OF 1**
34 **YEAR; AND**

1 **(2) SHALL HAVE THE CONTRACT, SUBCONTRACT, OR GRANT**
2 **RECEIVED BY THAT PERSON THAT GAVE RISE TO THE VIOLATION TERMINATED**
3 **IMMEDIATELY.**

4 **(B) A CONTRACTOR OR GRANTEE IN COMPLIANCE WITH THE**
5 **REQUIREMENTS OF § 20-104(C) OF THIS TITLE THAT COOPERATES WITH AN**
6 **ADMINISTRATIVE OR CRIMINAL INVESTIGATION BY A CONTRACTING AGENCY**
7 **INVESTIGATING AN ALLEGED VIOLATION BY A SUBCONTRACTOR OR**
8 **SUBGRANTEE IS NOT SUBJECT TO ANY OF THE SANCTIONS REQUIRED UNDER**
9 **SUBSECTION (A) OF THIS SECTION THAT MAY BE IMPOSED ON A**
10 **SUBCONTRACTOR OR INDIVIDUAL INDEPENDENT CONTRACTOR UNDER**
11 **SUBSECTION (A) OF THIS SECTION.**

12 **(C) A CONTRACTOR, SUBCONTRACTOR, OR GRANTEE THAT IS**
13 **AGGRIEVED BY A FINAL DECISION BY AN AGENCY TO DEBAR THE PERSON FROM**
14 **CONTRACTING WITH AN AGENCY OR TO TERMINATE A CONTRACT OR GRANT MAY**
15 **APPEAL THE DECISION BY FILING A PETITION WITH THE MARYLAND STATE**
16 **BOARD OF CONTRACT APPEALS UNDER TITLE 15 OF THIS ARTICLE, UNLESS**
17 **ADMINISTRATIVE APPEAL HAS BEEN EXPRESSLY DELEGATED BY LAW TO**
18 **ANOTHER ADJUDICATIVE BODY.**

19 SECTION 2. AND BE IT FURTHER ENACTED, That, unless otherwise
20 required under this Act, this Act shall:

21 (1) Apply to each contractor or subcontractor under a public contract
22 executed, or each recipient of a grant of public money received, on or after October 1,
23 2011; and

24 (2) Require a contractor or subcontractor under a public contract
25 executed, or each recipient of a grant of public money received, on or after October 1,
26 2011, to use the E-Verify program prescribed under this Act to verify the employment
27 eligibility status of each employee hired by the contractor or recipient who performs
28 work under the public contract or grant.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2011.